

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:

Review of the Commission's Broadcast  
and Cable Equal Employment  
Opportunity Rules and Policies

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MM Docket No. 98-204

**Comments of the**



**I. INTRODUCTION AND SUMMARY**

On behalf of more than 930 independent cable companies, the American Cable Association ("ACA") submits these comments to support the Commission's efforts to increase diversity in the workplace and to better accommodate the unique needs of smaller cable companies. ACA's comments will address three issues: (1) the need for small cable relief; (2) the appropriate threshold for this relief; and (3) the impact of changing the threshold.

Together, ACA's 930 members serve about 7.5 million cable subscribers, primarily in smaller markets and rural areas in all 50 states. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller systems and smaller markets. About half of ACA's members serve less than 1,000

subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in smaller markets and rural areas. For many smaller companies, compliance with EEO outreach, recordkeeping, and reporting requirements imposes substantial administrative burdens and costs, and drains scarce resources from already lean budgets and staff.

To address the special circumstances of smaller cable companies, ACA proposes the following relief:

- An exemption from the EEO outreach requirements.
- Streamlined recordkeeping and reporting requirements under the proposed new rule.
- A streamlined Form 395-A.

This relief would apply to cable companies serving fewer than 15,000 subscribers, based on the standard established by the Commission for small system rate regulation relief. In the alternative, ACA proposes that this relief apply to cable employment units with 10 or fewer employees.

## **II. CONGRESS AND THE COMMISSION HAVE CONSISTENTLY RECOGNIZED THAT SMALL CABLE COMPANIES NEED REGULATORY AND ADMINISTRATIVE RELIEF**

Congress and the Commission have consistently expressed special concern for the ability of smaller cable systems to bear the costs and burdens of administrative obligations. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions.<sup>1</sup> Likewise, extensive Commission action has demonstrated the

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<sup>1</sup> 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable

importance to the public interest of maintaining viable smaller cable companies and the need to provide regulatory relief to further this public interest.<sup>2</sup>

The Commission has determined that small systems with fewer than 15,000 subscribers “do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies.”<sup>3</sup> As a result, these small systems “face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition.”<sup>4</sup> Additional regulatory burdens, including those under the previous and proposed EEO regulations, compound these challenges.

Recognizing the difficulties that all small cable operators face, the Commission adopted exceptions to its EEO requirements for cable employment units with fewer than six and fewer than ten full-time employees.<sup>5</sup> These thresholds still leave many very small cable companies to puzzle through managing compliance with outreach, recordkeeping, and reporting obligations on very limited resources. The voluminous amounts of data required under the proposed recordkeeping and reporting requirements<sup>6</sup> would add yet another administrative burden for these companies.

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systems that have 1,000 or fewer subscribers.”); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m).

<sup>2</sup> For a summary of these efforts in the context of rate regulation, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393, at 7401-7402, 7420 (1995) (“*Small System Order*”). For special small cable leased access rules, see *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access, Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd. 5267 at 5331-5332, 5333 (1997).

<sup>3</sup> *Small System Order*, ¶ 28.

<sup>4</sup> *Small System Order*, ¶ 25.

<sup>5</sup> *Report and Order in MM Docket Nos. 98-204 and 96-16*, 15 FCC Rcd 2329 (2000).

<sup>6</sup> NPRM at ¶ 16.

To provide relief to companies that most need it, ACA proposes that the Commission revise its threshold to exempt cable companies serving fewer than 15,000 from the EEO outreach requirements, and to streamline proposed recordkeeping and reporting requirements and Form 395-A for these companies. Alternatively, ACA proposes that the Commission provide this relief to cable employment units with 10 or fewer employees.

### **III. A 15,000 SUBSCRIBER THRESHOLD IS APPROPRIATE FOR EEO OUTREACH REQUIREMENTS**

Adopting the 15,000 subscriber threshold found in the Commission's *Small System Order* and adapting it to small cable companies (as opposed to systems) serving fewer than 15,000 subscribers would have three major benefits:

- Providing regulatory relief to a broader class of cable companies that the Commission has already recognized needs relief.
- Simplifying the regulatory structure governing small cable companies by adopting similar thresholds.
- Relieving regulatory burdens for a significant number of smaller cable companies while affecting relatively few positions in the industry.

#### **A. The Commission has recognized that systems serving fewer than 15,000 subscribers require regulatory relief**

In the *Notice of Proposed Rulemaking*,<sup>7</sup> the Commission noted its longstanding policy to exempt from EEO outreach rules cable employment units with fewer than six full-time employees,<sup>8</sup> but to base this exemption on whether a unit has fewer than 6 employees excludes many companies that the Commission and Congress have repeatedly recognized require administrative relief.

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<sup>7</sup> *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Notice of Proposed Rule Making*, FCC 01-363, MM Docket No. 98-204 (rel. Dec. 2001) ("NPRM").

In the *Small System Order*, the Commission analyzed the economic, physical, and financial characteristics of cable systems above and below 15,000 subscribers and determined that there were significant differences between these two groups, while finding that systems serving under 15,000 subscribers “face many of the same challenges that systems of 1,000 or fewer subscribers do in providing cable service.”<sup>9</sup> Accordingly, the Commission extended relief to systems serving fewer than 15,000 subscribers owned by small cable companies serving a total of 400,000 or fewer subscribers.<sup>10</sup>

The administrative challenges facing smaller cable companies to gather, process, and report data are no different in the EEO context. The Commission should give smaller companies wide latitude in determining how best to implement the Commission’s EEO policies. Smaller companies often serve rural communities and smaller markets, and almost always have extremely limited financial and administrative resources.<sup>11</sup> The number and types of resources needed to ensure EEO compliance is a heavy burden for many smaller companies. The Commission, therefore, should allow smaller companies (those with fewer than 15,000 subscribers, or, alternatively, cable employment units with ten or fewer employees) to determine how many and what types of recruitment sources to use as part of their recruitment efforts. This will provide smaller companies with the flexibility needed to comply with ongoing EEO obligations without establishing unreasonable Commission expectations or unnecessary burdens.

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<sup>8</sup> NPRM at ¶ 48.

<sup>9</sup> *Small System Order* at ¶¶ 25-27.

<sup>10</sup> *Id.* at ¶ 38.

<sup>11</sup> *Small System Order* at ¶ 26.

Companies with fewer than 15,000 subscribers face the same challenges operating their systems as those with 1,000 subscribers or those cable employment units with fewer than 6 employees. By adopting a 15,000 subscriber threshold for the EEO outreach, recordkeeping, and reporting requirements, the Commission will assist a sector of the industry that it has repeatedly recognized to be in need of relief.

**B. Adopting the 15,000 subscriber threshold would simplify the regulatory regime that governs smaller cable companies**

In its *Small System Order*, the Commission determined that basing regulatory relief on company size in terms of *subscribers*, rather than dollars, would advance regulatory simplicity,<sup>12</sup> stating:

[E]vidence suggests that operating challenges faced by small cable companies are closely tied to the number of subscribers served rather than the revenues they generate.<sup>13</sup>

A great many smaller cable companies are located in rural areas and operate widely-scattered small systems. ACA members operating these systems report substantial difficulty in discerning what an “employment unit” is. The 15,000 subscriber threshold is well-established and would be easily measured by these smaller companies.

If the Commission declines to provide relief for companies serving fewer than 15,000 subscribers, at a minimum, it should implement the requested relief for cable employment units with ten or fewer employees. The burden of EEO compliance is overwhelming these small companies. They require relief.

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<sup>12</sup> *Small System Order* at ¶ 28.

<sup>13</sup> *Small System Order* at ¶ 31.

**C. Providing relief to systems serving less than 15,000 subscribers will not adversely impact workplace diversity in smaller cable companies**

Providing the relief that ACA requests will not adversely impact workplace diversity. The number of management positions affected will be minimal, and expanding smaller cable relief will not contravene congressional intent.

The National Cable Television Association estimates that the cable industry serves about 69.4 million subscribers<sup>14</sup> and employs almost 131,000.<sup>15</sup> ACA members serve about 7.5 million subscribers. Extrapolating from industry figures as a whole, ACA members employ approximately 14,000. A good portion of these 14,000 positions are not the management positions at which the EEO requirements are directed. Providing the relief that ACA proposes will aid smaller cable companies without affecting many management positions within the industry.

Nor will implementing ACA's proposal for small cable relief contravene congressional intent regarding cable EEO requirements. Although 47 U.S.C. §554(b) prohibits all cable systems defined in §554(a) from discrimination in employment and §554(c) requires that all such systems establish, maintain, and execute equal opportunity programs, subsection (d) gives the Commission wide latitude to set the administrative requirements that cable entities must meet to comply with the statute.<sup>16</sup> It is a hardship for small cable companies to comply with the extensive outreach, recordkeeping, and reporting requirements of the Commission's proposed rules. The

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<sup>14</sup> [http://www.ncta.com/industry\\_overview/indStats.cfm?statID=1](http://www.ncta.com/industry_overview/indStats.cfm?statID=1).

<sup>15</sup> [http://www.ncta.com/industry\\_overview/indStats.cfm?statID=7](http://www.ncta.com/industry_overview/indStats.cfm?statID=7).

<sup>16</sup> See 47 U.S.C. § 554(d)(2), which states, in pertinent part, that the rules "shall specify the terms under which an entity specified in subsection (a) of this section shall, *to the extent possible*—(A) disseminate its equal opportunity program to job applicants...(B) use minority organizations, organizations for woman...and other potential sources of minority and female applicants, to supply referrals..." [emphasis added].

Commission should use the discretion given to it by Congress to increase the exemption from the EEO outreach requirements and to streamline recordkeeping and reporting requirements and Form 395-A.

Further, Congress' concern regarding cable EEO focuses on women and minorities in "positions of management authority" and its policy that "increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media."<sup>17</sup> There is no evidence in the record that there is a dearth of females and minorities in positions of management authority at small cable companies.

## **V. CONCLUSION**

ACA and its members fully support increasing diversity in the workplace. Yet, there is no suggestion on the record that small cable companies are a problem in terms of equal employment opportunity. Given the limited financial and administrative resources available to small cable companies and the availability of recruiting sources in smaller towns and rural America, the Commission should provide relief by exempting companies with under 15,000 subscribers from the EEO outreach requirements, and by streamlining EEO recordkeeping and reporting requirements and Form 395-A. These accommodations would benefit small cable companies without sacrificing congressional or Commission EEO policies.

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<sup>17</sup> See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 22(a), 106 Stat 1498 (1992).



Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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